

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CAROLYN MILLENDER)	
)	
Plaintiff,)	
)	
VS.)	CASE NO.: 2:07-cv-145-MHT
)	
H. COUNCILL TRENHOLM STATE)	
TECHNICAL COLLEGE; ANTHONY)	
MOLINA, in his official capacity as)	
President of H. Councill Trenholm State)	
College)	
)	
Defendants.)	

DEFENDANT'S EXPERT WITNESS DISCLOSURE

COMES NOW the Defendant through undersigned counsel and discloses the identity of persons who may be used at trial to present evidence under Rules 701, 702, 703 or 705 of the Federal Rules of Evidence:

- | | | |
|----|--|--|
| 1 | Janet Thornton
ERS
4901 Tower Court
Tallahassee, Florida 32303 | See Attached Report |
| 2. | Russell Yawn
Chief Investigator, Technology Crimes
Office of Prosecution Services
515 South Perry Street
Montgomery, Alabama 36104 | Mr. Yawn's expertise is in the area
of computer forensics |

Respectfully submitted,

TROY KING
Attorney General
By:

/s/ MARY GOLDTHWAITE
MARY GOLDTHWAITE (GOL013)
Assistant Attorney General

OF COUNSEL:

OFFICE OF THE ATTORNEY GENERAL
11 South Union Street
Montgomery, AL 36130
(334) 353-9189
(334) 242-2433 (fax)

CERTIFICATE OF SERVICE

I hereby certify that I have, on this 14th day of September, 2007, electronically filed the foregoing with the Clerk of the Court, using the CM/ECF filing system, and that I have further served a copy of the foregoing upon the foregoing, by placing same in the United States Mail, postage prepaid and properly addressed as follows:

William F. Patty, Esq.
BEERS, ANDERSON, JACKSON
PATTY, VAN HEEST & FAWAL, PC
250 Commerce Street, Suite 100
Montgomery, AL 36104

Candis A. McGowan, Esq.
WIGGINS, CHILDS, QUINN & PANTAZIS, LLC
The Kress Building
301 19th Street North
Birmingham, AL 35203

/s/ MARY GOLDTHWAITE
OF COUNSEL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Carolyn Millender,)	
Plaintiff,)	
)	
v.)	Case No.: 2:07-cv-145-MHT
)	
H. Councill Trenholm State Technical)	
College, and Anthony Molina, in his)	
Official capacity as President of)	
H.Councill Trenholm State College)	
Defendant.)	
_____)	

AFFIDAVIT OF JANET R. THORNTON, PH.D.

Dr. Janet R. Thornton, affiant, affirms under oath as follows:

1. I am a labor economist with a Ph.D. in Economics (1992) from Florida State University. My fields of expertise include labor economics, computer analysis of large databases, and applied econometric and statistical analysis. Since 1986 I have worked as an economist at ERS Group, a SourceCorp company, which is a consulting firm that engages in research on economic issues and where I am currently a Director. My current curriculum vitae and list of testimony for the prior four years are attached in Appendix A. My billing rate is currently \$450 an hour.

2. Counsel for the defendants in the above captioned matter asked ERS Group to examine the compensation and schedule assignment among the Schedule C Professional employees at Trenholm State Technical College from 2000-2001 through the 2006-2007 fiscal year,¹ the period during which Ms. Millender has been employed.

3. Our comparisons showed that there is not a difference by gender in either the schedule assignment or salaries in each fiscal year. In other words, the data failed to reveal a statistically significant difference by gender in either the salary or schedule assignment. Generally, social scientists and the courts conclude that any differences between two groups are statistically similar when the difference, in terms of the number of standard deviations, is

¹ In this affidavit the term "fiscal year" is not the same as a calendar year. For example, the 2000 "fiscal year" refers to those contracts in effect at the beginning of the 2000-2001 fiscal year.

less than approximately two (or three) standard deviations.² A difference that is less than two (or three) standard deviations is consistent with a greater than 5% (or 1%) probability of that difference occurring by chance. When the differences are smaller than two (or three) standard deviations, then they are typically considered to be “statistically insignificant.” Conversely, social scientists and the courts typically conclude that differences are statistically dissimilar when the number of standard deviations of the difference is greater than approximately two (or three) standard deviations [or the probability of chance occurrence is less than or equal to 5 % (or 1 %)]. When the differences are as large as two (or three) standard deviations or larger they are considered to be “statistically significant.”

4. It is my understanding that there are three types of Schedule C Professional employees, C-1, C-2, and C-3. Ms. Millender is among the Schedule C-3 employees and, based on the complaint, desired to be either C-2 or C-1. When we examined the distribution of men and women among the three possible schedules, we determined that the distribution was consistent with what we would predict in a gender-neutral process. There is not a statistically significant difference in the distribution of male and female employees in each fiscal year, 2000-2001 through 2006-2007. The following table provides the distribution of the employees for 2006-2007. We find that regardless of the schedule, the majority of the employees are female. In addition, the percent female is higher among those in C-1 and C-2 in 2006-2007.

Schedule	Number of Employees	Number Female (Percent)	Number Male (Percent)
C-1	3	2 (67%)	1 (33%)
C-2	3	2 (67%)	1 (33%)
C-3	22	14 (64%)	8 (36%)

5. Further, we examined the salaries of the Schedule C employees in each fiscal year, 2000-2001 through 2006-2007. We prepared regression analyses to determine whether statistically significant relationships exist between variables, such as between salary and gender. The advantage of using a regression analysis is that we can estimate this relationship while simultaneously taking into account the effect of other variables, such as length of service. The measure of the influence of each of the factors included in a regression model is reflected in each variable’s “coefficient.” The magnitude of the coefficient provides information about how large an effect the variable has on salary, holding the other factors constant. The sign of the coefficient (positive or negative) tells us the direction in which the impact is felt. In this matter, the only information available for each of the employees is their gender, salary, schedule, job title, and year of hire. The job titles are essentially unique among these employees and, therefore, it would be inappropriate to include such a factor as it would

² Social scientists and statisticians have used criteria of “greater than two or three standard deviations” to categorize a result as “statistically significant” for over 75 years. See, for example, Statistics by Freedman, Pisani, and Purves. Courts adopted this standard in voting rights cases (e.g., Castaneda v. Partida, 430 U.S. 482, 97 S. Ct. 1272 (1977)) and carried the standard over to equal employment issues in such cases as Hazelwood School District v. U.S., 433 U.S. 299, 308 n.14 (1977) and Teamsters v. U.S., 431 U.S. 324; 97 S. Ct. 1843 (1977).

uniquely identify each employee. If we had information on prior experience for each of the employees we could have also included such information. However, the employees whom Ms. Millender identified as her comparators generally have more experience and/or experience in an education field than she.

6. We prepared the regression model estimating salaries by including the number of years of service as well as the years of service squared. The squared term is included in order to capture the nonlinear relationship between earnings and experience that is well documented in labor economic literature. In addition, we prepared a model that also included the schedule of each employee (C-1, C-2, and C-3). The following table summarizes our findings. After controlling for these factors, we determined that there are no statistically significant differences in salary by gender in each fiscal year, regardless of the inclusion of schedule as an explanatory factor. Further, we determined that there are no statistically significant differences in the percentage increases in salaries by gender during this time period. In other words, we do not find differences in salary by gender.

Fiscal Year*	Number of Employees	Number of Female Employees	Estimated Effect of Female on Total Compensation	t-Value	Probability of Occurring by Chance	Adjusted R-Square
<i>Includes Gender, Tenure, and Tenure Squared</i>						
2000	14	11	+\$8,352	0.90	39.1%	24.9%
2001	20	13	-\$764	-0.12	90.7%	9.5%
2002	22	14	-\$454	-0.08	94.1%	8.0%
2003	23	14	+\$507	0.09	92.8%	8.8%
2004	26	16	+\$501	0.10	91.9%	15.0%
2005	28	18	+\$143	0.03	98.0%	8.9%
2006	28	18	+\$2,295	0.37	71.1%	8.3%
<i>Includes Gender, Tenure, Tenure Squared, and Schedule</i>						
2000	14	11	+\$7,654	1.24	25.1%	68.1%
2001	20	13	-\$1,020	-0.24	81.4%	61.0%
2002	22	14	+\$1,564	0.38	71.3%	57.4%
2003	23	14	+\$4,481	1.14	27.1%	55.3%
2004	26	16	+\$3,581	0.93	36.6%	48.4%
2005	28	18	+\$550	0.13	89.6%	49.8%
2006	28	18	+\$2,829	0.62	54.5%	48.6%
The t-Value is comparable to the number of standard deviations. When the probability of occurring by chance is over 5%, then the outcome is not statistically significant. The adjusted R square indicates the percentage of the variation in salaries that is explained by the factors included in the model.						
*The fiscal year, for example, for 2006 is the period 2006-2007.						

7. In conclusion, we do not find differences in either the salary or the schedule assignment by gender for the 2000-2001 through 2006-2007 fiscal years.

Appendix A



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PROFESSIONAL EXPERIENCE:

ERS GROUP

Director, ERS Group, April 2004 to present.

Dr. Thornton specializes in the use of data analysis and statistical techniques to analyze credit decisions and to determine how employment practices relate to gender, race, ethnicity, and age. She has testified as an expert witness in both credit and employment cases. Dr. Thornton has also designed software to monitor lending practices and has prepared salary, termination, and hiring audits for employers. In conducting these analyses, Dr. Thornton performs project manager duties including the supervision of economists and team members.

Vice President and Senior Research Economist, ERS Group, 1998-2004.
Senior Research Economist, Economic Research Services, Inc., 1997-1998.
Research Economist, Economic Research Services, Inc., 1986-1997.

Florida State University
Instructor of Quantitative Methods and Statistics, 2000-2001.

Georgia Southwestern College
Part-time Instructor, 1985-1986

Economic Research Services, Inc.
Research Assistant, Tallahassee, Florida, Summer 1985

Florida State University
Instructor, Economics, 1984-1985

Economic Research Services, Inc.
Research Assistant, Tallahassee, Florida, Summer 1984

Florida State University
Instructor and Teaching Assistant, Economics, 1982-1984

University of Central Florida
Research Assistant, 1981

EDUCATION:

Ph.D., Florida State University, Economics, 1992

M.S., Florida State University, Economics, 1985

B.A., University of Central Florida, Economics and Political Science, 1981

HONORS AND AWARDS:

Omicron Delta Epsilon (Economics)

Omicron Delta Kappa (National Leadership)

Pi Sigma Alpha (Political Science)

Phi Kappa Phi Honor Society

Scholarship to attend Conference on Public Choice, Center for Public Choice, Blacksburg, Virginia, 1983

SPECIALIZATION:

Labor and Natural Resource Economics

PUBLICATIONS AND RESEARCH PAPERS:

"Recent Developments in the Analysis of Employment Practices," (with Joan Haworth and Paul White), Development in Litigation Economics, Vol. 87. Eds. Patrick Gaughan and Robert Thornton, Contemporary Studies in Economic and Financial Analysis. Amsterdam: Elsevier, 2005.

"Minority and Female Owned Business Opportunity in Atlanta," (with Joan G. Haworth), Prepared for the City of Atlanta, October 2000.

"Cohort Analysis and the Determination of Economic Damages Resulting from Employment Discrimination," (with Michael J. Piette). Journal of Forensic Economics, Vol. VIII, No. 1, Winter 1995.

"Using New Labor Force Participation Rates When Computing Economic Damage and Loss: A Methodological Note," (with Michael J. Piette). Journal of Legal Economics, Vol. 4, No. 2, Summer 1994.

"A Human Capital Approach to School Retention," Ph.D. Dissertation, Department of Economics, Florida State University, April 1992.

PRESENTATIONS/PROFESSIONAL MEETINGS:

Presented "Compensation Tune-Up for 2007: Tools for Analyzing and Monitoring Compensation," a Web Seminar, 2007.

Presented at ERS Group's "Analyzing and Monitoring Compensation in Today's Regulatory Environment" Seminar, Washington, D.C. and San Francisco, CA, 2005.

Presented "Commonly Used Statistical Techniques" and/or "Advanced Statistical Techniques: Compensation Analysis" at ERS Group's "Employment Discrimination: Economic and Statistical

Presentations/Professional Meetings (Cont.)

Evidence" Seminar, Washington, D.D., 2006; Washington, D.C. and New York, 2004; Washington, D.C. and New York, 2003; Chicago and New York, 2002; Dallas, 2001; New York and Los Angeles, 2000; Atlanta, Chicago, and San Francisco, 1999.

Presented "Exposure and Liability – Calculating Damages" at ERS Group's "Employment Discrimination: Economic and Statistical Evidence" Seminar, Los Angeles, 1998.

"The Use of Cohort Analysis in the Litigation Context," (with Michael J. Piette), paper presented at the American Economic Association Meeting, New Orleans, January 1992.

"Changes in Labor Force Participation Rates Over Time: Some New Evidence From Census Data," (with Michael J. Piette), paper presented at the Southern Economic Association Meeting, Washington D.C., November 1992.

PROFESSIONAL ASSOCIATIONS AND MEMBERSHIPS:

American Economic Association

National Association of Forensic Economics

COMPUTER LANGUAGES AND STATISTICAL PACKAGES:

Extensive use and knowledge of FORTRAN, SAS, and SPSS on mainframe and personal computers. Knowledge and use of FOCUS, BMDP, COBOL, and Pascal.

Use of Atlas Pro Software to construct thematic maps

COMPUTER SYSTEMS:

IBM RS6000 Model 58H, operating in an IBM UNIX environment

IBM 3090-400 VM-CMS environment at the University of Florida, Gainesville, Florida

Concurrent Corporation/Perkin-Elmer at Economic Research Services, Inc., Tallahassee, Florida

Control Data Cyber 850 at the Florida State University, Tallahassee, Florida

Janet R. Thornton, Ph.D.

Testimony*

Eugene Crum, Jr., et al. v. State of Alabama, et al.; Case Number 94-T-356-N, U.S. District Court, Middle District of Alabama, Northern Division. [declaration]

Kelvis Rhodes, et al. v. Cracker Barrel Old Country Store, Inc.; Case Number 4:99-CV-217-HLM, U.S. District Court, Northern District of Georgia, Rome Division. [declaration]

Gwen D. Carlson, et al. v. C.H. Robinson Worldwide, Inc. and Trevor Johnson, et al. v. C.H. Robinson Worldwide, Inc.; Civil Action Numbers CV-02-3780 and CV-02-4261, U.S. District Court, District of Minnesota, Fourth Division. [depositions and declarations]

Joyce Jones, et al. v. Ford Motor Credit Company; Case Number 00-CIV-8330, U.S. District Court, Southern District of New York. [declaration]

Diane M. Herzman v. Texaco Group, LLC; Civil Action Number 03 Civ. 6006 (CM), U.S. District Court, Southern District of New York. [deposition]

United States of America, Timothy D. Pope, Intervenor-Plaintiff, Johnny Reynolds, et al., Intervenor-Plaintiffs, and Eugene Crum, et al., Intervenor-Plaintiffs v. Thomas G. Flowers, et al., and Alabama State Conference of NAACP Branches, Amicus Curiae, Civil Action No. 68-T-2709-N, US District Court, Middle District of Alabama, Northern Division. [depositions and affidavit]

Valarie A. Swain v. Nextel Communications, Inc.; Civil Action Number 02-MK-2379 (CBS), U.S. District Court, District of Colorado. [trial testimony]

Tana R. Cummins v. State of Illinois, et al.; Case Number 02-4201-JLF, U.S. District Court, Southern District of Illinois. [trial testimony]

Ayanna Harrington, et al. v. Disney Regional Entertainment, Inc. and Zone Enterprises of Georgia, LLC; Civil Action No. 1:02-CV-1145-CAP, U.S. District Court, Northern Division of Georgia, Atlanta Division. [deposition and affidavit]

Latonya Claybrooks, et al. v. Primus Automotive Financial Services, Inc. and Primus Financial Services; Class Action No. 3-02-0382, U.S. District Court, Middle District of Tennessee, Nashville Division. [declaration and trial testimony]

In Re: American General Life and Accident Insurance Company Industrial Life Insurance Litigation, Civil Action No. 3:01-5000-22, U.S. District Court, Middle District of South Carolina, Columbia Division. [deposition]

Richard Sanzo v. Nextel Communications, et al., Civil Action No. 04-1364 (FSH), U.S. District Court, District of New Jersey. [deposition]

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Testimony* (continued)

Clifford L. Whitaker, et al. v. 3M Company, Court File No. C4-04-12239, State of Minnesota District Court, County of Ramsey, Second Judicial District. [affidavits]

Fannie Archer, et al. v. Nissan Motor Acceptance Corporation, et al., Civil Action No. 3:03cv 00906-HTW, U.S. District Court, Southern District of Mississippi. [deposition and declaration]

James W. Johnson v. The District Board of Trustees of Broward Community College, Florida, Winston Thompson, and Ed Henn, Case No. 06-60372-CIV-DIMITROULEAS, U.S. District Court, Southern District of Florida, Broward Division. [affidavit]

John H. Pinkowski, et al. v. 3M Company, Civil Action No. 05-5668, U.S. District Court, District of New Jersey. [declaration]

Anna Diaz, et al. v. Schering Plough Corporation and Schering Corporation, Civil Action No. UNN-L-1462-05, Superior Court of New Jersey, Law Division Union County. [deposition]

Appendix B

INFORMATION SOURCES

- Complaint/Petition for Writ of Mandamus, dated January 4, 2007
- Amended Complaint, filed June 29, 2007
- Plaintiff's Responses to First Interrogatories to Plaintiff, dated July 13, 2007
- Ms. Millender's EEOC Charge of Discrimination dated January 3, 2007, with attachments (AEA/Millender 0379-0392)
- Employee Conference with AEA memo (AEA/Millender 0001-0002)
- Letter from EEOC investigator Sheri Guenster to Ms. Millender, dated September 19, 2006 (AEA/Millender 0393)
- Schedules B and C for fiscal years 2005-2006, 2006-2007, and 2007-2008
- Ms. Millender's job application, resume and job descriptions (Millender v Trenholm 000046-000071)
- Personnel information for male comparators:
 - Michael Evans (Millender v Trenholm 000596-600, 604-608, 616-620)
 - Michael Miller (Millender v Trenholm 000288-295, 303-304, 319-320, 328)
 - Timothy Gates (Millender v Trenholm 001520-1525, 1536-1542)
 - Quinton Ross (Millender v Trenholm 000455-465, 469-474, 483-484, 489-492)
 - Charles Harris (Millender v Trenholm 000163-170, 173-179, 182-183, 207-208)
- Position reorganization information (Millender v Trenholm 003535-3540, 3545-3559, 3562, 3580)
- Appointment letter of Dr. Molina, dated November 14, 2001
- Spreadsheet of salary data